



## Final Regulation Agency Background Document

<b>Agency name</b>	Common Interest Community Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 48-70
<b>Regulation title</b>	Common Interest Community Ombudsman Regulations
<b>Action title</b>	Initial Common Interest Community Ombudsman Regulations
<b>Date this document prepared</b>	June 21, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This is a new regulation establishing the requirement that, pursuant to § 55-530 of the Code of Virginia, each association must have a written complaint procedure for the resolution of written complaints from the members of the association and other citizens, establishes minimum requirements for such procedures, provides for the distribution of these procedures to the members of the association and citizens, requires the maintenance of association records of complaints, and indicates the consequences for failure of an association to establish and utilize a complaint procedure. The regulation also establishes procedures and forms for filing a notice of final adverse decision with the Department.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

On June 9, 2011, the Common Interest Community Board adopted final amended regulations for 18 VAC 48-70, Common Interest Community Ombudsman Regulations, to implement the requirements relating to association complaint procedures and filing of notices of final adverse decisions with the Department as a result of the enactment of Chapters 851 and 871 of the Acts of the 2008 General Assembly.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 55-530.I of the Code of Virginia states that “[t]he Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.” In addition, § 55-530.E states that “[t]he Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. . .” § 54.1-201.E states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The new regulation establishes the requirement that each association must develop reasonable procedures for the resolution of written complaints from the members of the association and other citizens, record-keeping provisions for filed complaints, forms and procedures to be provided, transmittal of information to members regarding the Office of the Common Interest Community Ombudsman, and procedures for filing a notice of final adverse decision with the Department. The new regulation is necessary to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301. The goal of the regulation is to establish the requirements for associations to handle complaints and provide information to the public for filing a notice of adverse decision with the Department, in accordance with HB 516 and SB 301.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.*

The regulation includes provisions required pursuant to § 55-530.E, F, G, and I of the Code of Virginia. This includes, but may not be limited to, requirements for the association complaint process, process for

filing a notice of final adverse decision, submitting an inquiry to the Office of the Common Interest Community Ombudsman, and related provisions.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage to the public is that associations will be required to establish and utilize written complaint procedures to ensure the resolution of complaints from their members, and to inform their membership of the right to file a notice of final adverse decision with the Department if the association issues a final decision adverse to their complaint. Public comments received indicate concerns that disadvantages may be increased legal costs to the association for handling complaints, the need to hire a professional manager (as opposed to being self-managed), and efforts necessary for the association to adopt the new complaint procedure.

The primary advantage to the Commonwealth is that the regulation will require association complainants to seek resolution within their association prior to filing any complaint with the Office of the Common Interest Community Ombudsman. No disadvantage to the Commonwealth could be identified.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
10	This section contains the definitions of certain terms used in the regulations. At the proposed stage, the definition of “association complaint procedure” provided that an appeal process shall be set out in the association governing documents or in an association complaint procedure.	The regulation was amended to state that an appeal process shall be set out in the association complaint procedure.	The change is based on public comment expressing concern that associations would have to go through the more arduous process of amending association governing documents. This change does not affect whether the appeal process is contained in the governing documents, however, it does clarify that it must be described in the association complaint procedure.
50	This section contains the	Subsections 5 and 6 of this section	The two subsections were

	<p>minimum requirements for an association complaint procedure.</p>	<p>were transposed.</p>	<p>transposed to more accurately reflect the chronological order of the complaint process. This change clarifies that the association must clearly describe any specific documentation that must be submitted with all complaints, but does not prevent the association from requesting additional information relevant to a specific complaint.</p>
<p>60</p>	<p>This section contains provisions related to distribution of an association complaint procedure to members of the association and citizens.</p>	<p>Subsection A was amended to clarify that the procedure must be readily available “upon request”. In addition, subsections B and D were deleted.</p>	<p>Subsection B was deleted as it was determined to be too limiting to an association. Public comments offered included a number of reasonable methods for distribution of the complaint process. Instead of trying to provide all of the possible avenues for distribution, the Board decided that the amendment to subsection A to indicate that the association complaint procedure must be readily available when requested omitted the possibility of imposing a burdensome requirement on an association to utilize a specific method of distribution. In addition, subsection D was deleted to remove the requirement for an annual reminder of the association complaint process. This requirement created a burden on the association to provide such reminder. In addition, this annual distribution requirement does not reach “citizens” (i.e., non-members) who are also permitted to file complaints via the association complaint process.</p>

90	This section provides the provisions for filing a notice of final adverse decision.	The provision was amended to delete “and for which all avenues for appeal, if applicable, within the association have been exhausted.”	The phrase that was deleted is part of the definition of “final adverse decision” in 18VAC48-70-10; therefore, it was redundant to include it in this provision.
125	No requirement – this is a new section.	This section was added to clarify the Board’s authority regarding violations of laws or regulations applicable to the Board.	The addition of this section was based on public comments questioning the limitation of the DPOR director’s authority to only issue a non-binding determination in response to the filing of a notice of final adverse decision, if the director’s review were to reveal alleged violations of laws or regulations. While the Board’s authority exists without the inclusion of this section, the Board thought it necessary to clarify that matters involving potential violations of laws or regulations under the Board’s authority may be subject to further action by the Board.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

#	REGULATION #	SUMMARY OF COMMENT(S)
	COMMENTOR’S NAME	<i>Board Response</i>
1	General – Exemption; Increased Expense	The regulations will result in an increase in management and legal expenses; regulations are burdensome for self-managed associations; establishing and maintaining complaint process puts undue burden of time and expense on association and its volunteer members. Commenters suggested that small associations (less than 25 homes) be exempt from the

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	COMMENTOR'S NAME	<i>Board Response</i>
		requirements of the Ombudsman Regulations.
	Jeremy Epstein	<b><i>The establishment of the complaint procedure by all associations is not discretionary pursuant to § 55-530.E of the Code of Virginia (“The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens [emphasis added]”). As indicated in the proposed definitions, the procedure contemplated by the regulations only pertains to those complaints that “concern a matter . . . inconsistent with applicable laws and regulations.” Thus, in most cases, the processes involving the handling of architectural control issues currently utilized by associations would not be affected by the complaint process established by this regulation.</i></b>
2	General	Proposed regulations are consistent with the statutory requirements of Chapter 29 of Title 55 of the Code of Virginia; the complaint procedure set forth in the proposed regulations are not the same as those established by the association’s board of directors to handle internal association complaints; and the requirements of the proposed regulations can be met with reasonable efforts by the association. Other comments reflect the need for seminars and educational programs such as those offered by the Office of the Ombudsman – further efforts and adding resources to the Office of the Ombudsman should be made a priority.
	Virginia Legislative Action Committee of Community Associations Institute	<b><i>The Board concurs with the comments regarding the differences in the complaint procedure addressed by the regulations and the association’s procedures for handling internal complaints. Once the Ombudsman Regulations are in place and more data is available regarding the types of issues that arise under the final adverse decision review process, the needs of the Office of the CIC Ombudsman may be more accurately assessed.</i></b>

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3	General	Questions value of the regulatory program by identifying several areas where the Board was not able to assist the association. In addition, opposed to allowing "citizens" (other than members of an association) being given standing to file complaints.
	Kenneth Moser	<b><i>The 2008 General Assembly determined that the establishment of the Office of the Common Interest Community Ombudsman and creation of the Board, including the regulatory programs under its purview, were necessary to protect the health, safety, and welfare of the public. The Board can only operate within the authority granted to it by law (which does not include violations of zoning laws, maintenance of state roads, or interfering with the internal affairs of the association). In reference to the ability of a citizen to file a complaint pursuant to these regulations, this provision was not discretionary as § 55-530.E of the Code of Virginia states "The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens [emphasis added]."</i></b>
4	General – Unnecessary	The commenter indicates associations have procedures in place to handle homeowner complaints; there is a court system in place to resolve issues between members and associations; and the regulations create an unnecessary burden and expense to associations.
	Charlestown HOA; Duane Ingalsbe	<b><i>The establishment of the complaint process is not discretionary pursuant to § 55-530.E of the Code of Virginia ("The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens [emphasis added]").</i></b>
5	General – Citizens having access to process	Opposes allowing "citizens" (other than members of an association) being given standing to file complaints. The commenter also includes a list of questions.
	Tom Carr	<b><i>This provision was not discretionary as § 55-530.E of the Code of Virginia states "The Board</i></b>

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		<b><i>shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens [emphasis added].”</i></b>
6	General	Supports the intent of the regulation. Concerned that this process could be used for all complaints within an association which would cause undue burdens and expense to the association. To mitigate this concern, suggests a one-week “cooling off” period (between initial communication of the concern in writing to the board of directors or manager and the date they would be permitted to file a completed complaint form) to allow the board of directors or manager the opportunity to address the complaint.
	Terrence Kuch	<b><i>The Board appreciates your suggestion. In reference to the expense and burden that the association would absorb for every complaint going through the process outlined in the regulations, the association would not have to use this process for complaints that do not involve alleged violations of regulations or statutes. As indicated in the proposed definitions, the procedure contemplated by the regulations only pertains to those complaints that “concern a matter . . . inconsistent with applicable laws and regulations.” Thus, in most cases, the processes involving the handling of routine maintenance issues currently utilized by associations would not be affected by the complaint process established by this regulation.</i></b>
7	General – Exemption; Increased Expense	Expresses concern that the proposed regulation invites complaints which will result in an increase in management and legal expenses – suggests exempting small associations (fewer than 51 members) from these requirements.
	William Brennan	<b><i>The establishment of the complaint procedure by all associations is not discretionary pursuant to § 55-530.E of the Code of Virginia (“The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the</i></b>

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		<i>members of the association and other citizens [emphasis added]”).</i>
8	General	Concerned about abuse of power by association board members – does not believe that this program will be effective in addressing this issue and is, therefore, a waste of time and taxpayer money.
	JR, VHOA	<i>The 2008 General Assembly determined that the establishment of the Office of the Common Interest Community Ombudsman and creation of the Board, including the regulatory programs under its purview, were necessary to protect the health, safety, and welfare of the public. As to the use of taxpayer funds to support the Board’s operations, the expenses associated with the regulatory boards within the Department of Professional and Occupational Regulation are paid by the fees collected for each program (i.e., application fees, renewal fees, etc.). § 54.1-113 of the Code of Virginia requires all regulatory boards to monitor their revenues and expenses to ensure that all fees collected are sufficient to cover the expenses related to administering the regulatory program but are not excessive. If there is a difference between revenues and expenses of 10% or more, the fees are adjusted accordingly.</i>
9	18 VAC 48-70-10	Pursuant to the definitions “an association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.” Believes that the quoted portion of the definition is unclear and needs to be further refined – not clear whether it applies to: maintenance issues that are not timely addressed; or covenant violations. What exactly is meant by “complaint” and will maintenance requests have to be filed through this process? Concerned that due to uneducated boards and ill-informed management companies, how will unit owners know the complaint process is being performed correctly and who makes a determination as to what a complaint is?
	Michelle O’Hare	<i>As indicated in the proposed definitions, the procedure contemplated by the regulations only pertains to those complaints that “concern</i>

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		<b><i>a matter . . . inconsistent with applicable <u>laws</u> and <u>regulations</u> [emphasis added].” As provided in 18 VAC 48-70-60 the association complaint procedure must be readily available to all members of the association. This would address the concern expressed by the commenter about a member knowing whether the procedure was followed by the association to reach a final determination regarding a complaint.</i></b>
10	General; 18 VAC 48-70-50.6; and 18 VAC 48-70-50.9	The regulations will result in an increase in management and legal expenses; establishing and maintaining complaint process puts undue burden on its volunteer members. Believes there needs to be a provision in the regulation to control frivolous and nuisance complaints. Concerned that the wording in 18 VAC 48-70-50.6 is too specific – believes that the documents required for each complaint is dependent on the circumstances and specifics of the complaint. Concerned that the wording in 18 VAC 48-70-50.9 (“...include specific citations to applicable association governing documents, laws, or regulations.”) will require associations to have every complaint reviewed by an attorney which (in conjunction with the lack of restriction on filing frivolous complaints) will become too costly. Suggests allowing associations to impose a filing fee to limit frivolous complaints (such as is permitted in § 55-530 F for complaints filed with the Office of the Common Interest Community Ombudsman). Suggests making this process voluntary as well as providing a sample template policy that can be used by associations.
	Christopher Ambrose	<b><i>The establishment of the complaint procedure by all associations is not discretionary pursuant to § 55-530.E of the Code of Virginia (“The Board <u>shall</u> establish by regulation a requirement that each association <u>shall</u> establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens [emphasis added]”). As indicated in the proposed definitions, the procedure contemplated by the regulations only pertains to those complaints that “concern a matter . . . inconsistent with applicable <u>laws</u> and</i></b>

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		<p><i>regulations [emphasis added].” The decision as to whether to have complaints reviewed by an attorney is at the discretion of the association.</i></p> <p><i>The Board agrees with the concern regarding 18 VAC 48-70-50.6. Subsections 5 and 6 of 18 VAC 48-70-50 have been transposed, as subsection 5 provides that the association can request additional information as needed to review the association complaint.</i></p> <p><i>The Board does not anticipate providing a template policy – it has provided the minimum requirements for such procedure in the proposed regulations while allowing for association-specific provisions to be developed based on the governing documents and needs of the individual association.</i></p>
11	General and 18 VAC 48-70-50.4, 7, and 8	Regarding 18 VAC 48-70-50.4, 7, and 8, the commenter suggests that all complaints and responses be required to be in hard copy form as not all association members are computer literate nor have computer access. Also all complaints, responses and action should be a matter of public record. Finally, give the Ombudsman some form of enforcement (fining) authority.
	Greg Mathieson, Sr.	<p><i>The provisions in the proposed regulations pertaining to the method of delivery of notices regarding complaints were established to be consistent with the notice provisions currently in the statutes for associations, which do not mandate electronic filing. Further, the provisions in the regulations state that delivery by electronic means is allowed “if consistent with established association procedure.” Acceptable delivery methods are at the discretion of the association so long as they are consistent with the applicable statute and supported by the association’s governing documents.</i></p> <p><i>Access to records of the association is currently addressed in § 55-79.74:1 of the Condominium Act and § 55-510 of the Property Owners’ Association Act. Once a notice of final adverse decision is filed with the Office of the</i></p>

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		<p><b><i>Common Interest Community Ombudsman, the release of documents pertaining to such notice or complaint is subject to the Freedom of Information Act (Title 2.2, Chapter 37 of the Code of Virginia).</i></b></p> <p><b><i>As to enforcement authority, such power lies with the Common Interest Community Board. The Board has certain authority provided in statute to address violations of laws and regulations by its regulants. If, during review, the Ombudsman were to determine that a violation of a regulation or statute under the Board's authority occurred, the Ombudsman may forward the complaint for investigation and possible disciplinary action by the Board.</i></b></p>
12	18 VAC 48-70-60	<p>18 VAC 48-70-60.D – Remove the requirement for the annual reminder as it is not required by statute.</p> <p>18 VAC 48-70-60 – Clarify that distribution via first-class mail, postage pre-paid, is acceptable.</p> <p>Finally, there is no requirement in statute to mandate the distribution of the complaint procedure using the method outlined in §§ 55-79.75:1 or 55-510.2 of the Code of Virginia - these provisions were intended to provide members with a way to communicate with each other and the board – rather than imposing a requirement that the board use this method to communicate to members.</p>
	Allen B. Warren, Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.	<p><b><i>The Board concurs with the suggested change to 18 VAC 48-70-60 and removes subsection D, which requires the association to provide an annual reminder to its members.</i></b></p> <p><b><i>In response to public comment, the Board has deleted the proposed subsection 18 VAC 48-70-60.B, which described the method(s) for distribution.</i></b></p>
13	General and 18 VAC 48-70-60.D	<p>Advocates having a complaint resolution policy in place; however, opposed to the regulation for penalizing an association for failing to remind owners of the existence of the complaint resolution policy (18 VAC 48-70-60.D).</p>

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	Garrett M. Smith	<b><i>The Board concurs with the suggested change to 18 VAC 48-70-60 and removes subsection D, which requires the association to provide an annual reminder to its members.</i></b>
14	General and 18 VAC 48-70-60.D	Opposed to the proposed regulation. The regulations are burdensome for self-managed associations and puts undue burden on its volunteer members. Requirements such as these will force more and more associations to hire paid professional managers to comply with increasing paperwork and regulatory procedures, with no real benefit, which will result in increasing assessments. Does not believe that distributing the complaint procedure, with annual reminders, is necessary if association is in compliance with the proposed regulation. Further, current owners can request such documents at any time and copies are given to prospective purchasers, so periodic redistribution is not necessary and is an undue burden and expense.
	Edwin Hutchinson	<b><i>The establishment of the complaint procedure by all associations is not discretionary pursuant to § 55-530.E of the Code of Virginia (“The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens [emphasis added]”). The Board concurs with the suggested change to 18 VAC 48-70-60 and removes subsection D, which requires the association to provide an annual reminder to its members.</i></b>
15	General and 18 VAC 48-70-70	Opposed to the proposed regulation. Believes it will cause condominium properties great inconvenience and expense with no benefit. Would require applicable regulations, which have been in place unchanged for decades, to be changed which would be arduous and expensive process. Concerned that the proposed regulation invites complaints which will result in an increase in workload and expense. Requirement to create and maintain a system of records is burdensome.

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	Jose Calvo	<i>While the Board understands the commenter's concern about the process to amend its governing documents, changes to the law that affect the provisions of the association's governing documents may often necessitate a change to ensure compliance. The legislature determined that establishing a uniform procedure for review of association complaints that involve laws or regulations applicable to the Common Interest Community Board and its programs was necessary to ensure that minimum standards for the handling of such complaints are met in order to protect the health, safety, and welfare of the public. The provision regarding record-keeping requires that a record of the complaint be "maintained for no less than one year after the association acts upon the complaint." Maintenance of complaint records is not inconsistent with existing requirements for maintenance of association records and would not require the development of a new record-keeping system unless the association so chose.</i>
16	General, 18 VAC 48-70-110, and 18 VAC 48-70-120	<p>18 VAC 48-70-110 – modify to require the association to concurrently send a copy of the information being sent to the Ombudsman to the complainant to allow the complainant the opportunity to review the information to ensure that it does not contain false, misleading, or incomplete information (which would be in violation of 18 VAC 48-50-220.C) – response must be made to Ombudsman within 20 days.</p> <p>18 VAC 48-70-120 (and § 55-530.G of the Code of Virginia) – "...the director may, in his sole discretion, provide the complainant and the association with information..." – does not understand why this is discretionary. It should be mandatory to further the statutory goal of "reducing and resolving conflicts among associations and their members."</p> <p>18 VAC 48-70-120 – add the following sentence to the end of 18 VAC 48-70-120: "However, if it appears that any governing board has engaged, is engaging, or is about to engage in any act or</p>

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		<p>practice in violation of Chapters 4.2, 21, 24, or 26 of Title 55, or any of the Board’s regulations or orders, the Board without prior administrative proceedings may issue a cease and desist order or bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief.” Clarify that non-compliance with the director’s finding of a violation, while technically non-binding, does not escape exposure to the remedial actions available in §§ 54.1-2351 and 54.1-2352 as well as 18 VAC 48-50-190.A.1.</p> <p>18 VAC 48-70-120 – clarify in this section that the director’s determination of a violation of law under the Ombudsman Regulations is not intended to inhibit the CICB from exercising its powers and duties under §§ 54.1-2351, 54.1-2352, or 18 VAC 48-50-190.A.1.</p> <p>General – without the Ombudsman’s Office, an association member in an association without a functioning complaint procedure is limited to initiating a board recall, suing or moving. For \$25, the Ombudsman option is most welcome.</p>
	<p>Richard Hart (supported by Robert Boone)</p>	<p><b><i>18 VAC 48-70-110 – The Ombudsman may request additional information as needed during the review of the complaint. Should discrepancies in information provided by the association and/or complainant be found during the review process, the Ombudsman may request information to resolve such discrepancy if it is pertinent to the Ombudsman’s final decision.</i></b></p> <p><b><i>18 VAC 48-70-120 – This provision reflects the statutory requirement that providing such information is at the discretion of the director, or his designee. However, as the commenter acknowledges, the Ombudsman’s goals include reducing and resolving conflicts between associations and their members; therefore, there would be no foreseeable reason to withhold such information.</i></b></p> <p><b><i>18 VAC 48-70-120 (new 125) – The Board concurs and has added a section to include</i></b></p>

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		<p><i>reference to the Board's authority to take additional action as permitted by applicable statute.</i></p> <p><i>The Board appreciates the commenters' support of the Office of the Common Interest Community Board.</i></p>
17	<p>18 VAC 48-70-10; 18 VAC 48-70-50.4; 18 VAC 48-70-50.7; 18 VAC 48-70-50.8; 18 VAC 48-70-60.B; 18 VAC 48-70-60.C; 18 VAC 48-70-60.D; 18 VAC 48-70-70.A; 18 VAC 48-70-90.A; 18 VAC 48-70-90.A.3; 18 VAC 48-70-120 ; 18 VAC 48-70-110; 18 VAC 48-70-110; 18 VAC 48-70-100</p>	<p>Commenter offered a number of changes and comments to clarify and improve the proposed Ombudsman Regulations.</p> <p>Commenter suggests communication of the procedure be pursuant to the notice requirements provided in the association's governing documents or otherwise under the applicable statutes and not via §§ 55-79.75:1 and 55-510.2, as many associations do not have a system in place that complies with the applicable statutory provision.</p> <p>Additional suggested changes to and comments regarding the proposed regulations are summarized as follows:</p> <p>18 VAC 48-70-10, definition of "association complaint procedure" – Does the appeal process relate to matters in the governing documents or just the complaint procedure? Is there an expectation that the governing documents will require amendment per this definition?</p> <p>18 VAC 48-70-40.4 – Can the "procedure" referred to in this section be established within the complaint process itself or does it have to be a separate procedure?</p> <p>18 VAC 48-70-50.7 – Does each association establish "reasonable time"?</p> <p>18 VAC 48-70-50.8 – The commenter changed "final determination" in this subsection to "final adverse decision." Per commenter, "Final determination" is not a defined term other than within the meaning of "final adverse decision." Does there need to be a cross definition for "final determination"?</p>

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		<p>18 VAC 48-70-60.B – Disagrees with provision to distribute complaint procedure. The statute does not require that the complaint procedure be distributed. Most associations do not have a method in place that complies with 55-79.75:1 or 55-510.2, as applicable. This method of communication is not available to “citizens.”</p> <p>18 VAC 48-70-60.C – Commenter does not believe that the requirement for the procedure to be made part of the resale certificate and association disclosure packet is permissible under current language in statutes.</p> <p>18 VAC 48-70-60.D – Change to read “by such means whereby the association regularly communicates with members” instead of method of communication established by statute.</p> <p>18 VAC 48-70-70.A – Maintenance of records in accordance with this provision does not protect an owner’s records from inspection by others. Does the Board intend to allow access to a complaint that may involve a personal matter?</p> <p>18 VAC 48-70-90 – Delete last phrase as it is part of the definition.</p> <p>18 VAC 48-70-90.A.3 – Is this intended to reference the laws and regulations related to the complaint or the manner in which the association adjudicated the complaint?</p> <p>18 VAC 48-70-100 – Will criteria be developed for making decisions for waivers due to financial hardship?</p> <p>18 VAC 48-70-110 – How will written notice to the association be distributed?</p> <p>18 VAC 48-70-110 – Is this not the same as 18 VAC 48-70-70.B?</p> <p>18 VAC 48-70-120 – Is this intended to reference the laws and regulations related to the complaint or the manner in which the association adjudicated</p>

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	COMMENTOR'S NAME	<i>Board Response</i>
		the complaint?
	Paul Orlando, Armstrong Management Services, Inc.	<p><b>18 VAC 48-70-10, definition of “association complaint procedure” – The regulations only pertain to those complaints that meet the definition of “association complaint.” An appeal process, if applicable, must be included in the complaint procedure.</b></p> <p><b>18 VAC 48-70-50.4 – The regulations only provide for the requirement to develop an association complaint procedure that conforms to the minimum requirements of the statutes and regulations. The regulations do not provide for the form of the procedure.</b></p> <p><b>18 VAC 48-70-50.7 – The “reasonable time” is determined by the association and contained in the association complaint procedure.</b></p> <p><b>18 VAC 48-70-50.8 – The final determination of the association is not a “final adverse decision” until such time as the complainant identifies it as being “opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant.”</b></p> <p><b>18 VAC 48-70-60.B – In response to public comment, the Board has deleted the proposed subsection 18 VAC 48-70-60.B, which described the method(s) for distribution.</b></p> <p><b>18 VAC 48-70-60.C – The Board does not believe this provision is prohibited by statute.</b></p> <p><b>18 VAC 48-70-60.D – The Board concurs with the suggested change to 18 VAC 48-70-60 and removes subsection D, which requires the association to provide an annual reminder to its members.</b></p> <p><b>18 VAC 48-70-70.A – This requirement does not impact the applicability of other portions of the statutes that address access to association records.</b></p>

#	REGULATION #	SUMMARY OF COMMENT(S)
	COMMENTOR'S NAME	<i>Board Response</i>
		<p><b>18 VAC 48-70-90 – The Board concurs with this comment and has deleted said language.</b></p> <p><b>18 VAC 48-70-90.A.3 – The complainant may reference either or both.</b></p> <p><b>18 VAC 48-70-100 – As the Board makes decisions regarding waivers due to financial hardship, the criteria will be established.</b></p> <p><b>18 VAC 48-70-110 – Either, both, or another method if requested, depending upon the most effective and/or preferred method of reaching the complainant.</b></p> <p><b>18 VAC 48-70-110 – 18 VAC 48-70-70 requires the association to maintain certain complaint-related records, and to provide information related to the complaint to the Director. 18 VAC 48-70-110 requires that the association provides additional information (not necessarily a complaint record) necessary during the review of the final adverse decision.</b></p> <p><b>18 VAC 48-70-120 – The director will consider any laws or regulations governing common interest communities. There is no provision to exclude the regulations or statutes related to the association complaint process or final adverse decisions.</b></p>

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	This section provides the definitions of various terms used in the regulations.	Definitions contained in Chapter 29 of Title 55 and Chapter 4.2 of Title 55	Explanation of various terms used in regulation.

20	Requires all documents to be submitted to the Department.	Chapter 29 of Title 55	To avoid confusion since different sections of the statutes require filings with the Board, the Director, or the Ombudsman's Office. If all documentation is filed with the Department, staff will channel the documentation to the appropriate recipient.
30	Requires associations to develop a complaint procedure.	§ 55-530.E	Will require associations that do not have a written complaint procedure to establish one.
40	Require associations to certify establishment and adoption of a written compliant procedure as part of their registration with the Board.	None	Require associations at time of registration with the Board and each annual report filing to certify that a complaint procedure has been established and adopted by the association.
50	Establishes requirements for association complaint procedures.	§ 55-530	To ensure that complaint procedures for all associations contain the same minimum provisions.
60	Establishes procedures for the distribution of an association's complaint procedure.	§ 55-510.2 and § 55-79.75:1	To ensure that association complaint procedures are provided with the resale certificate or disclosure packet, and are also readily available to all members and citizens.
70	Requires that associations maintain complaint records.	§ 55-530.E.1	Ensures that complaint records are appropriately maintained and available upon request by the Department.
80	Identifies the consequences to an association for failing to establish and utilize a complaint procedure.	Chapter 23.3 of Title 54.1	To inform associations of the Board's authority to take action against an association to remedy any violation of Virginia law and these regulations.
90	Establishes procedures and requirements for filing a notice of final adverse decision.	§ 55-530.F and 18 VAC 48-70-110	To ensure that a final adverse decision has been made by an association prior to filing a notice of such decision with the Board. Also, to ensure that all information required for processing such notice is received.
100	Allows the Board to waive the \$25 notice filing fee upon a finding of undue financial hardship for the complainant.	§ 55-530.F	The \$25 filing fee and waiver allowance is a statutory requirement.
110	Establishes the procedure for the review of the final adverse decision.	§ 55-530.G	This procedure is described in statute.
120	Describes decisions made by the Director upon review of a final adverse decision by an association.	§ 55-530.G	This decision is described in statute.

125	Indicates that the director may refer any matter to the Board for further action if the review of final adverse decision reveals alleged violation of laws or regulations under the Board's authority.	Chapter 23.3 of Title 54.1 and Chapters 4.2, 26, and 29 of Title 55	This section is to clarify that action is not limited to the DPOR director's authority to issue a non-binding determination in response to the filing of a notice of final adverse decision. If the director's review were to reveal violations of laws or regulations the matter may be referred for further action by the Board.
130	Indicates the authority of the Office of the Common Interest Community Ombudsman.	§ 55-530	The authority of the Office of the Common Interest Community Ombudsman is established and described in statute.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations were developed with consideration that the affected industries consist of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses and are consistent with the regulation of small businesses of other professions.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

No impact on families in Virginia has been identified as resulting from the proposed regulation.